

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 707**

[OPTS 130000A; TSH FRL 2444-5]

Chemical Imports and Exports; General Import Requirements and Restrictions Policy for Import of Chemical Substances**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This policy explains how EPA will interpret and carry out its responsibilities under the Toxic Substances Control Act (TSCA) section 13 chemical substances import rule issued by the U.S. Customs Service (Customs), Treasury Department. The Customs rule was published in the *Federal Register* of August 1, 1983 (48 FR 34734), and is codified in 19 CFR 12.118 through 12.127, and 127.28 [amended]. The effective date of the Customs rule was postponed to January 1, 1984, as published in the *Federal Register* of September 30, 1983 (48 FR 44771).

DATE: The effective date of this policy is December 13, 1983.

FOR FURTHER INFORMATION CONTACT:

Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:**Background**

Customs issued a final rule concerning import of chemical substances under section 13 of the Toxic Substances Control Act (15 U.S.C. 2612), which was published in the *Federal Register* of August 1, 1983 (45 FR 34734). The Customs rule is codified in 19 CFR 12.118 through 12.127, and 127.28 [amended]. The effective date of the Customs rule was postponed to January 1, 1984, as published in the *Federal Register* of September 30, 1983 (48 FR 44772).

When the Customs rule was proposed in the December 1, 1980, issue of the *Federal Register* (45 FR 79730), EPA simultaneously proposed and solicited comment on a policy concerning EPA responsibilities under TSCA section 13 (45 FR 79726). This is the final EPA policy explaining how EPA will carry out its responsibilities under the Customs chemical substances import rule. The EPA policy is codified in 40 CFR with other EPA rules. It cross-references the Customs rule at 19 CFR Part 12.

Comments that were received on the proposed Customs rule and proposed

EPA policy are addressed in the preamble to the final Customs rule, which was published in the *Federal Register* of August 1, 1983 (45 FR 34734). The final rule and policy adopted several suggestions made by commenters.

Customs Rule Provisions

The Customs rule requires importers of chemical substances in bulk or as part of a mixture subject to TSCA to certify at the port of entry that the chemical substances and their import comply with TSCA. Because some chemicals (e.g., pesticides) are not "chemical substances" subject to TSCA, the Customs rule requires importers to certify that such chemicals are not subject to TSCA. The rule also describes entry and detention procedures that will be used to insure compliance.

Customs has the responsibility to detain all shipments that fail to comply with TSCA or any applicable rule or order under TSCA. EPA's responsibilities under the rule are to determine whether detained shipments and their entries comply, to notify Customs which shipments should be detained, and to identify steps necessary to bring detained shipments into compliance, or to be taken when shipments are not brought into compliance. Because of its relevant knowledge and expertise, EPA is also responsible for storage and disposal of abandoned noncomplying shipments.

The Customs rule sets forth general certification requirements and detention procedures. It does not address how a chemical shipment and its import would comply with TSCA. The main purpose of the EPA policy statement is to describe what compliance with TSCA means.

TSCA'S Treatment of Imports

The policy of Congress toward regulation of imports under TSCA is expressed in the legislative history of TSCA:

[I]mported chemical substances and mixtures will be subject to regulation in the same manner as domestically produced chemical substances and mixtures are. In addition, importers of chemical substances and mixtures will have the same responsibilities and obligations as domestic manufacturers. H.R. Rep. No. 94-1341, 94th Cong. 2d Session 12-13 (1976).

The Act recognizes the critical position of importers in protecting health and the environment from exposure to hazardous chemicals by defining "manufacture" to include importation in addition to domestic production and manufacture (section 3(7); 15 U.S.C. 2602(7)). Consequently, whenever TSCA places responsibilities on domestic

manufacturers, the responsibilities also extend to importers.

The TSCA regulations that apply to importers, because they are defined as manufacturers, include among other things, section 5 rules for chemical substances not on the TSCA Inventory and for chemicals subject to notification for significant new uses, and other manufacture or use restrictions under section 6. Importers must comply with such rules under section 5 and section 6 before chemicals may be imported. Importers may also be subject to export notification requirements under section 12 when entry is denied for an intended import, and the importer chooses to export noncomplying shipments.

In addition, because TSCA defines importers as manufacturers, importers may be subject to rules such as testing requirements under section 4 and reporting requirements under section 8.

However, because such rules do not apply to individual chemical shipments, and because compliance with such rules may be a lengthy procedure, importation would not depend on the importers' satisfaction of section 4 and section 8 requirements. However, if a section 4 or 8 rule requires notification of EPA prior to the import of a specified chemical, any importer of that chemical should ensure that the required notification has been completed before certifying that a shipment containing the chemical is in compliance with TSCA.

Importers are subject as manufacturers to sanctions for violations of TSCA. Section 16 of TSCA describes civil penalties and criminal penalties which may be invoked. Sections 7 and 17 provide for specific enforcement of TSCA by the district courts of the United States, and for seizure and condemnation of noncomplying chemical substances, mixtures, and articles by process of libel. If an imported shipment does not comply with TSCA, EPA will seek appropriate remedies under TSCA against persons responsible for the violations. The sanctions are in addition to those which may independently be prescribed for violation of the Customs rule.

Meaning of Certification

Certification that a chemical import complies with TSCA, and that an importer has discharged all the TSCA obligations related to the import, is accomplished by a brief statement to be typed or preprinted on an entry document, invoice, or attachment and to be signed by the importer. The statement would read: "I certify that all chemical substances in this shipment comply with all applicable rules under TSCA and that I am not offering a chemical substance for entry in violation

of TSCA or any applicable rule or order under TSCA."

The section 13 rule requires importers to certify that other appropriate TSCA requirements are satisfied; section 13 by itself does not impose additional substantive requirements. No more detailed information than is needed to comply with other TSCA rules is needed to comply with the section 13 certification requirement.

The final Customs rule requires importers of chemicals not subject to TSCA (e.g., pesticides) to sign the statement: "I certify that all chemicals in this shipment are not subject to TSCA." This was added to the rule at the request of commenters who were concerned about possible delays at entry ports.

Chemical Substances Subject to Certification

Under the Customs rule, certification of compliance with TSCA is required for chemical substances imported in bulk or as part of mixtures. The certification requirement becomes effective January 1, 1984.

The rule does not require certification for chemical substances imported as part of articles unless EPA requires reporting under a TSCA rule. The primary reason for not requiring certification of all articles at this time is the difficulty in identifying their component chemical substances and mixtures for purposes of determining whether they are on the TSCA Chemical Substance Inventory. At this time, there are no TSCA rules which apply to articles. However, future TSCA rules may apply to articles containing certain chemical substances. These future TSCA rules which apply to articles will specify that certification is required.

Who Must Certify

One commenter requested that the section 13 rule allow development of a corporate mechanism, similar to that of TSCA section 8(e), to end individual liability when the importing company institutes a corporate certification procedure. The rule does not adopt this suggestion. As discussed in the preamble to the Customs rule, the person who certifies is responsible for the truth of his statement. However, EPA would use its prosecutorial discretion to determine appropriate liability for persons involved in specific cases.

In this policy, "importer" is defined by reference to the Customs section 13 rule. This adopts the general Customs definition at 19 CFR 101.1(k). The definition is repeated here for convenience.

"Importer" means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be: (1) The consignee, or (2) the importer of record, or (3) the actual owner of the merchandise if an actual owner's declaration and superseding bond has been filed in accordance with § 141.20 of this chapter, or (4) the transferee of the merchandise, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with subpart C of Part 144 of Chapter I of 19 CFR.

TSCA Requirements Covered by Certification

The exact TSCA requirements concerning chemical imports will change as rules are developed and other actions taken under sections 5, 6, and 7 of TSCA. Consequently, it will be important for importers to remain informed of TSCA rules. Examples of current requirements are described below. To obtain additional information on TSCA rules, importers may contact the TSCA Assistance Office to be placed on the mailing list for the Chemicals-In-Progress Bulletin. This is a bi-monthly publication that lists current rulemakings. EPA uses the Chemicals-In-Progress Bulletin mailing list when the Agency sends out other information about TSCA. Importers may request other information by writing or phoning the TSCA Assistance Office at the address given above under "FOR FURTHER INFORMATION CONTACT."

1. *Inventory and premanufacture notice requirements.* Section 5(a)(1) of TSCA imposes an important responsibility on persons who intend to import new chemical substances into the United States. Persons who import chemical substances not on the TSCA Inventory must submit premanufacture notices under section 5, 90 days prior to import. If a chemical substance is not on the Inventory, its importation would comply with TSCA requirements only if (a) the chemical substance had completed EPA review under section 5, or (b) it were exempt from section 5 requirements.

A chemical substance is considered to be on the Inventory if it is on the EPA Master Inventory File. This includes the most recently published chemical substances inventory (including any supplements or revisions) and substances accepted for inclusion on the Inventory but not yet published. The most recently published Inventory is the Revised Inventory. This consists of the Initial Inventory published on June 1, 1979, together with the Cumulative Supplements published in July 1980, and May 1982.

The importer certification applies only to chemical substances intentionally

present in the import. Impurities are not generally subject to section 5 requirements. There are other specific exemptions from section 5 requirements. One exemption applies to chemical substances imported solely for research and development. Under section 5, the importer would himself determine whether an import were intended solely for research and development. Another exemption applies to chemical substances imported for test marketing purposes. Persons planning to import chemical substances for test marketing purposes must apply for an exemption from section 5 requirements if they do not submit a PMN. These section 5 requirements are described in detail in: Premanufacture Notification: Premanufacture Notice Requirements and Review Procedures, published in the Federal Register of May 13, 1983 (48 FR 21721).

2. *Other requirements.* Certification of compliance with TSCA also means that imported chemical substances and their importation comply with any applicable requirement in effect under sections 5, 6, or 7 of TSCA. These requirements may include, among others, significant new use notification requirements under section 5(a)(2); prohibitions or limitations on importation, processing, or distribution under sections 5(e), 5(f), or 6; and court orders under section 7. Importers will need to be aware of rules that apply to imports of chemical substances in bulk, in mixtures, or in articles in order to ensure that applicable rules have been observed.

A commenter pointed out that a chemical substance imported for purposes exempt from TSCA might later be used for TSCA-regulated purposes. The commenter asked if the importer would be responsible in this situation, and suggested that the situation be covered by a preprocessing notification similar to the one proposed on August 15, 1980.

This suggestion has not been adopted, because EPA considers the situation unlikely to occur.

Basis for Certification—Enforcement

Under this section 13 rule, the importer is required to place the certification of compliance on the appropriate entry document. The importer who certifies may, in a particular case, be the person primarily liable for payment of duties or one of his agents. In some cases, a domestic purchaser may cause the importation and handle the entire entry process himself, without employing agents. In other cases, brokers or other agents may be used. In any case, the person

certifying compliance must insure that the imported chemical substances comply with TSCA and any applicable regulations under TSCA.

Whenever the documents accompanying the imported shipment identify the chemical substances exactly, the person who is certifying compliance can check the identity against requirements under TSCA. When the chemical substance or mixture is imported under a name that does not identify it exactly, and the person certifying does not otherwise know the identity, he should attempt to discover the chemical constituents of the shipment by contacting another party to the transaction (e.g., his principal or the foreign manufacturer). This person may be able to identify the components of the substance or mixture, or at least state that the substance or mixture complies with TSCA. The greater the effort an importer makes to learn the identities of the imported substances, the smaller his chance of committing a violation by importing a noncomplying shipment. If a shipment were ultimately determined to have violated TSCA, the good faith efforts of the importer to verify compliance, as evidenced by documents contained in his files, may obviate or mitigate the assessment of a civil penalty under section 16 of TSCA.

International Cooperation

EPA recognizes its obligations under Title IV of the Trade Agreements Act of 1979 (Pub. L. 96-39). That law provides the legal framework for implementing trade agreements entered into by the United States; Title IV (Standards Code) sets forth principles and procedures for Federal agencies, including EPA, to follow in their rulemakings, to prevent the creation of unnecessary technical barriers to foreign trade.

The Standards Code is not intended to prevent Federal agencies from making rules or setting standards affecting international trade, for example, in chemical products, if such measures have a demonstrable purpose to achieve a legitimate domestic objective, such as protecting health, safety, and the environment within the United States, and do not serve to exclude imported products that fully meet the objectives of such measures. The Standards Code states, however, that agencies involved in such rulemaking shall consider the adoption of existing international standards, if they are appropriate, and insure that imported products are treated no less favorably than like domestic or other imported products. Although there are no existing international standards for control of imported chemicals, at such time as

international agreement is reached, EPA would be prepared to modify this policy as needed. However, EPA considers that the TSCA section 13 policy complies with the principles of the international Standards Code. In addition, the certification required by the section 13 rule is designed to acknowledge compliance with TSCA requirements that are also in effect for domestically manufactured chemical substances.

Economic Impact

An analysis of the industry cost of importer certification was prepared in conjunction with development of the section 13 rule issued by the U.S. Customs Service (see 48 FR 34734, August 1, 1973). This policy statement imposes no costs beyond those considered in the promulgation of the section 13 rule.

Public Record

The EPA public record for development of this import policy is docket OPTS 130000. All documents, including the final Customs rule, are available to the public in the OTS Reading Room from 8:00 a.m. to 4:00 p.m. on working days in Rm. E-107, 401 M St., SW., Washington, D.C. 20460. This record includes basic information considered by EPA and Customs in developing the rule and policy. The EPA public record contains all comments submitted to EPA and copies of all comments submitted to Customs.

List of Subjects in 40 CFR Part 707

Chemicals, Environmental protection, Imports, Exports, Reporting and recordkeeping requirements.

(Sec. 13, Pub. L. 94-469, 90 Stat. 2034 (15 U.S.C. 2612))

Dated: December 6, 1983.

William D. Ruckelshaus,
Administrator.

Therefore, 40 CFR Part 707 is amended by adding a new Subpart B consisting of § 707.20 to read as follows:

PART 707—IMPORTS AND EXPORTS

Subpart A—[Reserved]

Subpart B—General Import Requirements and Restrictions

§ 707.20 Chemical substances import policy.

(a) *Scope.* (1) This statement addresses the policy of the Environmental Protection Agency (EPA) on importation of chemical substances, mixtures, and articles under section 13 of the Toxic Substances Control Act (TSCA; 15 U.S.C. 2601 et seq.). In particular, it addresses aspects of the

regulation promulgated by the United States Customs Service (Customs), Department of the Treasury (19 CFR 12.118 through 12.127, and 127.28 [amended]) to implement section 13 of TSCA, 15 U.S.C. 2612. Section 13 requires the Secretary of the Treasury to refuse entry into the Customs territory of the United States of a chemical substance, mixture, or article if it does not comply with rules in effect under TSCA, or if it is offered for entry in violation of TSCA or rules or orders under TSCA.

(2) In addition to this statement of policy, EPA will continue, as necessary, to address problems associated with imports in rulemaking and other actions under individual sections of TSCA, i.e., sections 4, 5, 6, 7, 8, and 12. Sections 5, 6, and 7 apply directly to imports subject to the section 13 requirements. Section 12 may apply to export of a shipment that is refused entry under section 13. Importers may have obligations under sections 4 and 8; section 4 and 8 requirements for importers would not apply to individual chemical shipments and thus are not included under section 13 requirements. Interested persons should refer to the records of these individual rulemaking actions for specific information and guidance.

(b) *Objectives.* (1) TSCA is intended to be comprehensive, and assure protection of health and the environment from unreasonable risks associated with chemicals whether the chemicals are imported or produced domestically. This intent is manifested by the inclusion of importation in the Act's definition of the term "manufacture": "[M]anufacture means to import * * *, produce, or manufacture" (15 U.S.C. 2602(7)). Thus, importers are responsible for insuring that chemical importation complies with TSCA just as domestic manufacturers are responsible for insuring that chemical manufacture complies with TSCA.

(2)(i) The section 13 rule requires importers to sign the following statement for each import of chemical substances subject to TSCA: "I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order under TSCA." The certification will document that, in accordance with TSCA, the importer has taken the necessary steps to insure compliance.

(ii) The section 13 rule requires importers of chemicals not subject to TSCA (e.g., pesticides) to certify that

compliance with TSCA is not required. Importers must certify this by signing the statement: "I certify that all chemicals in this shipment are not subject to TSCA." This is appropriate when a chemical import is not clearly identified as a pesticide or other chemical not subject to TSCA.

(3) The United States is involved in a major effort toward international harmonization in the control of chemicals. At such time as international agreement is reached on this issue, EPA would be prepared to modify its policy if necessary. EPA believes that its international harmonization efforts in the control of chemicals will protect health and the environment while fulfilling its obligations under the Trade Agreements Act of 1979.

(c) *The section 13 rule*—(1) *General certification.* (i) The rule promulgated under section 13 of TSCA by Customs, in consultation with EPA, implements the requirement of section 13 that chemical substances, mixtures, or articles not in compliance with TSCA, or whose importation is not in compliance with TSCA, shall be denied entry into the customs territory of the United States. The rule requires that importers certify by a statement, on the entry document or invoice, that any shipment of a chemical substance subject to TSCA, imported in bulk or as part of a mixture, complies with TSCA, and that it is not offered for entry in violation of TSCA or any rule or order under TSCA, or that the chemicals imported are not subject to TSCA.

(ii) The certification applies to TSCA sections 5, 6, and 7.

(iii) EPA expects that this certification will be based upon actual knowledge of the importer in most cases. However, EPA realizes that sometimes importers may not have actual knowledge of the chemical composition of imported mixtures. In these cases, the importer should attempt to discover the chemical constituents of the shipment by contacting another party to the transaction (e.g., his principal or the foreign manufacturer). This person may be able to identify the components of the mixture, or at least state that the substances comply with TSCA. The greater the effort an importer makes to learn the identities of the imported substances and their compliance with TSCA, the smaller his chance of committing a violation by importing a noncomplying shipment. If a shipment is ultimately determined to have violated TSCA, the good faith efforts of the importer to verify compliance, as evidenced by documents contained in his files, may obviate or mitigate the

assessment of a civil penalty under section 16 of TSCA.

(2) *EPA enforcement.* (i) EPA and Customs will monitor chemical imports to determine if shipments and their import comply with the certification requirements and the substantive mandates of TSCA. Customs will refuse entry to any shipment until such time as the certification is properly submitted. Customs will also detain a shipment if there are reasonable grounds to believe that such shipment or its import violates TSCA or regulations or orders thereunder. A violative shipment must either be brought into compliance, exported, destroyed, or voluntarily abandoned within the time periods prescribed in 19 CFR 12.124 of the section 13 rule.

(ii) When EPA determines that a shipment should be detained, EPA will identify the reasons for the detention and the necessary actions for an importer to bring the shipment into compliance with TSCA. If EPA has given this information to Customs before the district director issues the detention notice, the information will become part of the detention notice. The importer should contact one of the following EPA regional offices for guidance as to the proper procedures to correct any deficiencies in the shipment.

Region I

John F. Kennedy Federal Building, Boston,
MA 02203 (617-223-0586)

Region II

26 Federal Plaza, New York, NY 10278 (201-321-6669)

Region III

Curtis Building, 6th & Walnut Streets,
Philadelphia, PA 19106 (215-597-7668)

Region IV

345 Courtland Street, N.E., Atlanta, GA 30365
(404-881-3864)

Region V

230 South Dearborn Street, Chicago, IL 60604
(312-353-2291)

Region VI

1201 Elm Street, Dallas, TX 75270 (214-767-2734)

Region VII

324 East 11th Street, Kansas City, MO 64106
(816-374-3036)

Region VIII

1860 Lincoln Street, Denver, CO 80295 (303-837-3926)

Region IX

215 Fremont Street, San Francisco, CA 94105
(415-974-8119)

Region X

1200 Sixth Avenue, Seattle, WA 98101 (206-442-2871)

(iii) If Customs detains or refuses entry of a shipment (other than for failure to make the general certification) and the importer takes measures necessary to bring the shipment into conformity with the requirements of TSCA, EPA officials will reassess the shipment to determine its current compliance status. When a shipment is no longer in violation, EPA will notify the district director and the importer. The district director will then release the shipment. This notice will also serve as a determination to permit entry under 19 CFR 12.123(c) if a shipment is brought into compliance before the 19 CFR 12.123(c) decision-making process has been completed. If compliance is achieved after a 19 CFR 12.123(c) determination (adverse to the importer) has been made, the EPA notice to the district director will serve as a reversal of the decision to refuse entry.

(3) *EPA assistance.* Assistance in determining whether a chemical shipment is in compliance with TSCA can be obtained from: TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Toll free (800-424-9065), In Washington, D.C. (554-1404), Outside the USA (Operator-202-554-1404).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 83-372]

Deregulation of Mobile Customer Premises Equipment

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This order grants in part a Motion for Expedited Briefing Schedule submitted by American Telephone and Telegraph Company in connection with a Petition for Reconsideration submitted by AT&T regarding a Commission action relating to the deregulation of installed mobile customer premises equipment. The order requires oppositions to be filed not later than December 14, 1983, and replies to be filed not later than December 19, 1983. The order is necessary to enable the Commission to resolve issues relating to the deregulation of mobile customer